

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 003351

66

ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 SS-15 L-02 FAA-00 DOTE-00

COME-00 RSC-01 /040 R

DRAFTED BY EB/AN:JBMAGNOR:DAP

APPROVED BY EB/AN:WBCOBB

EUR/WE - E. BEIGEL

EUR/NE - C. FLOYD

EUR/NE - A. PINKNEY

EUR/CE - B. FLATIN

CAB - W. BURCH

----- 085321

R 072306Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY THE HAGUE

INFO AMEMBASSY LONDON

AMEMBASSY BRUSSELS

AMEMBASSY STOCKHOLM

AMEMBASSY COPENHAGEN

AMEMBASSY OSLO

AMEMBASSY BONN

AMEMBASSY BERN

AMCONSUL ZURICH

LIMITED OFFICIAL USE STATE 003351

E.O. 11652:N/A

TAGS: EAIR, NL

SUBJECT: CIVAIR: CAB LETTER TO KLM CONCERNING ALLEGED
VIOLATION OF CAB RULES

TEXT OF LETTER DATED DECEMBER 31, 1974 FROM DIRECTOR CAB
BUREAU OF ENFORCEMENT TO KLM NEW YORK V.P. KIELMAN FOLLOWS:

"PURSUANT TO RULE 801 OF THE RULES OF PRACTICE OF THE
CIVIL AERONAUTICS BOARD, KLM IS HEREBY ADVISED OF ALLEGED
VIOLATIONS OF UNITED STATES LAW FOR WHICH CIVIL PENALTIES
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 003351

MAY BE IMPOSED.

"BY BOARD ORDER 74-11-83, ADOPTED NOVEMBER 19, 1974, KLM WAS REQUIRED TO FILE WITH THE BOARD WITHIN SEVEN (7) DAYS COPIES OF ALL EXISTING SCHEDULES BETWEEN THE UNITED STATES AND THE NETHERLANDS. THIS OBLIGATION WAS STAYED UNTIL DECEMBER 16, 1974, BY THE COURT OF APPEALS BUT SINCE THAT DATE HAS BEEN, AND REMAINS, IN FULL FORCE AND EFFECT.

"THREE WEEKS AFTER ADOPTION OF THE ORDER, ON OR ABOUT DECEMBER 11, 1974, DISCUSSIONS WERE HELD BETWEEN THE SECRETARY OF STATE OF THE UNITED STATES AND THE MINISTER OF FOREIGN AFFAIRS OF THE NETHERLANDS IN WHICH IT WAS AGREED THAT THE STATUS QUO WOULD BE MAINTAINED UNTIL THERE HAD BEEN AN OPPORTUNITY FOR FURTHER CONSULTATIONS EXPECTED EARLY IN 1975. IT WAS AGREED THAT NO UNILATERAL ACTION

SHOULD BE TAKEN WHICH MIGHT ENDANGER THAT STATUS QUO. DESPITE SUCH AGREEMENT, HOWEVER, KLM HAS APPARENTLY ELECTED UNILATERALLY TO DISREGARD EXISTING OBLIGATIONS, IN PARTICULAR, THE OBLIGATIONS IMPOSED BY THE ABOVE-MENTIONED ORDER. TO DATE, KLM HAS NOT FILED ITS SCHEDULES AND HAS ADVISED THE BOARD'S BUREAU OF INTERNATIONAL AFFAIRS, BY TELEGRAM RECEIVED DECEMBER 30, 1974, OF ITS INTENTION NOT TO FILE.

"I VIEW THE POSITION TAKEN BY KLM IN ITS DECEMBER 30, 1974 TELEGRAM WITH SOME ALARM. YOU SUGGEST THAT THE SECRETARY OF STATE HAS COMMITTED THE UNITED STATES NOT TO ENFORCE ITS LAWS. WHILE BOARD ORDER 74-11-83 REQUIRES KLM TO FILE SCHEDULES, AND WHILE SECTION 1005(E) OF THE FEDERAL AVIATION ACT (ACT) REQUIRES COMPLIANCE WITH BOARD ORDERS, YOU ARGUE THAT THE SECRETARY HAS SET ALL SUCH MATTERS ASIDE. I SUBMIT THAT YOUR VIEW IS NOT, AND CANNOT BE, SUPPORTED IN LAW OR IN FACT.

"THE SECRETARY HAS COMMITTED THE UNITED STATES NOT TO ACT UNILATERALLY UNTIL THERE HAS BEEN AN OPPORTUNITY FOR CONSULTATIONS. REQUIRING KLM TO COMPLY WITH EXISTING REQUIREMENTS CANNOT BE VIEWED AS A DEPARTURE FROM SUCH COMMITMENT. IF KLM WERE TO COMPLY WITH EXISTING REQUIREMENTS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 003351

AND WERE TO FILE SCHEDULES, ANY DECISION BY THE BOARD TO ORDER DISCONTINUANCE OF SUCH SCHEDULES, A DECISION WHICH MIGHT BE VIEWED AS "UNILATERAL" IN ITS IMPACT, WOULD BE SUBJECT TO DISAPPROVAL OR STAY BY THE PRESIDENT UNDER 213.3 OF THE REGULATIONS. IF SUCH WERE TO HAPPEN, AND IT IS PREMATURE TO SUGGEST THAT IT EVER WILL, THE SECRETARY WOULD BE IN A PROPER POSITION TO URGE A STAY IN THE EVENT HE FELT ONE TO BE WARRANTED.

"WHATEVER MAY (OR MAY NOT) HAPPEN IN THE FUTURE, HOWEVER, IT IS APPARENT THAT KLM MUST COMPLY WITH LAWFUL OBLIGATIONS IMPOSED UPON IT NOW AND WHICH SERVE AS CONDITIONS TO ITS OPERATING AUTHORITY INTO THE UNITED STATES. AMONG SUCH OBLIGATIONS IS ORDER 74-11-83 AND, IN MY OPINION, KLM HAS BEEN IN VIOLATION OF SUCH ORDER, AS WELL AS PART 213 OF THE REGULATIONS AND SECTIONS 402(A) AND 1005(E) OF THE ACT, SINCE DECEMBER 27, 1974 AS THE RESULT OF HAVING REFUSED TO FILE ITS SCHEDULES.

"SECTION 901 OF THE ACT PROVIDES FOR A PENALTY NOT TO EXCEED \$1,000 FOR EACH OFFENSE, WITH EACH DAY OF A CONTINUING VIOLATION CONSTITUTING A SEPARATE OFFENSE. AS OF TODAY'S DATE, DECEMBER 31, 1974, IT APPEARS THAT KLM MAY BE SUBJECT TO A TOTAL CIVIL PENALTY OF NOT MORE THAN

FOUR THOUSAND DOLLARS (\$4,000). WITH EACH DAY THAT PASSES BEFORE SCHEDULES ARE PROPERLY FILED, AN ADDITIONAL ONE THOUSAND DOLLARS (\$1,000) MAY BE SOUGHT.

"THE BOARD IS EMPOWERED TO COMPROMISE CIVIL PENALTIES (SECTION 901(A)(2) OF THE ACT) AND THAT POWER HAS BEEN DELEGATED TO ME AS ENFORCEMENT DIRECTOR (14 C.F.R. 385.22). SUBPART H OF THE RULES OF PRACTICE (14 C.F.R. 302.800 ET SEQ.) SETS FORTH PROCEDURES, OF WHICH THIS NOTICE IS AN ELEMENT, WHEREBY SUCH COMPROMISES CAN BE EFFECTUATED. NO COMPROMISE WILL BE ACCEPTABLE, OF COURSE, UNTIL COMPLIANCE WITH ORDER 74-11-83 HAS BEEN ACHIEVED.

"IN THE EVENT NO COMPROMISE IS POSSIBLE, THE MAXIMUM POTENTIAL CIVIL PENALTY AVAILABLE WILL BE SOUGHT IN THE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 003351

APPROPRIATE FEDERAL DISTRICT COURT (SECTION 903 OF THE ACT). OTHER REMEDIES, BOTH JUDICIAL AND ADMINISTRATIVE, MAY ALSO BE SOUGHT ANY TIME.

"TO THE EXTENT YOU WISH TO ANSWER THIS NOTICE, YOU HAVE FIFTEEN (15) DAYS WITHIN WHICH TO DO SO UNDER THE PROVISIONS OF RULE 803 AND YOUR ANSWER SHOULD CONTAIN THOSE MATTERS PERMITTED UNDER RULE 804. COPIES OF SUBPART H, AS WELL AS SECTION 901 AND 903 OF THE ACT, ARE ENCLOSED FOR YOUR CONVENIENCE.

"SINCERELY, WILLIAM M. GINGERY; DIRECTOR, BUREAU OF ENFORCEMENT." END TEXT. KISSINGER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DIPLOMATIC COMMUNICATIONS, AIRSPACE VIOLATIONS, AVIATION REGULATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE003351
Document Source: CORE
Document Unique ID: 00
Drafter: JBMAGNOR:DAP
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750006-1168
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750171/aaaackut.tel
Line Count: 167
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 16 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 APR 2003 by MartinML>; APPROVED <16 MAY 2003 by MorefiRH>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR: CAB LETTER TO KLM CONCERNING ALLEGED VIOLATION OF CAB RULES
TAGS: EAIR, NL
To: THE HAGUE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006